Secl. II-39-37.004-25.11.26.

Law (1926) Department.
(General)

Ordinary SERIES.

G.O. No. 416

DATED 10-2-1926

[Despatch Abstract.]

Legislative Council Question.

August 1925--Bench Courts, Mangalore--trial of offences under the Motor Vehicles Act--recorded.

Starred question 8-6-25 Council Office

Mr. J.A. Saldanha:-

The Law (Genl.) Dept

* 258. Will the hon. the Law Member be pleased to state--

(a) what is the strength of the first class Bench at Mangalore;

(b) what are the qualifications of the President of the Bench at Mangalore and what were the qualifications of his predecessor;

(c) what are the precedents and antecedents of the other members of the ~~Board~~ Bench;

(d) how many cases were transferred from the Bench court to the other courts during the year ending 31st May, 1925 and under what classes of offences and by which magistrate;

(e) how many cases under the Motor Vehicles Act were tried by the Bench during the year ending 31st May 1925 and what was the number of convictions; and

(f) whether there has been an order made by the District Magistrate to the effect that no cases under the Motor Vehicles Act should be sent to the Bench and on what grounds; and

(g) whether Government consider it consistent with the dignity of a Bench court of Justice that the Sub Divisional Magistrate should have powers to transfer cases from the Bench and whether Government propose to direct that this power should be exercised by the Dt. Magistrate alone?

RB

Law (Genl) Dept

Memo No. 3144B1 dt. 29/6

L.C. Question No 258.

First class Bench of Magistrates
Mangalore.

A copy of the Legislative Council Question referred to above is forwarded to the D.M South Kanara, ~~with the request that he would be requested~~ with the request that he will be pleased to furnish Govt: with the necessary information at a very early date.

Plstk 25.6.25

26.6.25

The D.M. South Kanara.
with a copy of the Question

25/6/25

28/6

Required after 2 weeks.

DESPATCHED
30 JUN 1925

Note

The information may be called for from the D.M

Plstk 25.6.25

Recd
DESPATCHED
16 JUL 1925

O.F. 29--24,264—4-4-21.

LAW (General) **DEPARTMENT.**

Received ..... *Registered* L. 1935 72B 192

23/7/25

Subject.

Legislative Council question No. 258 - 1st Class Bench of Magistrates, Mangalore.

ENCLOSURES
No. .....
.....
Spare copies.....

L. Dis. No. 5402-25.

Station Mangalore, *Dated the* 21st July 1925. 192

From (Name) G. W. Wells, Esquire, M.A., I.C.S.,

(Designation) District Magistrate of South Kanara.

To The Secretary to the Government of Madras,

LAW (GENERAL) Department.

Sir,

Ref

Government Memorandum No. 3144-B1, dated 29-6-1925.

The information called for by the Government in the reference quoted above, is furnished below:-

Question (a):- The strength of the Bench is 15 ----- including the President.

Question (b):- The President, Mr. J. J. Fernandes is a land-lord paying a large amount of assessment to Government. He is a Bar-at-law. His predecessor, Rao Bahadur S. Raghunathaya, was a retired Sub Judge and a Law Graduate of the Madras University.

Question (C):- A statement of particulars is enclosed.

Question (D):- A statement is enclosed.

Question (E):- 13 cases under the Motor Vehicles Act were tried during the period, out of which 12 ended in conviction.

Question (f):- An order was passed by my predecessor that all charge sheets under the Motor Vehicles Act pertaining to offences occurring within the jurisdiction of the Stationary Sub Magistrate, Mangalore should be laid before the Sub Magistrate who should dispose of the cases himself. Only charge sheets in respect of petty offences under the Town Nuisance and the ----- Hackney Carriage Acts are usually laid before the Bench Court -- and all other cases are received on its file by transfer from -- other Courts. Thus the order of my predecessor only directed - the Stationary Sub Magistrate to retain all the cases under the Motor Vehicles Act on his own file. The order appears to have been passed at the instance of the District Superintendent of - Police who had pointed out that in this class of case the ----- accused are supported by their rich masters who probably have - great influence over the majority of the members of the Bench. It was also pointed out by the District Superintendent of ----- Police that a similar system was in vogue in South Arcot - all the cases under the Motor Vehicles Act being tried by Sub Magistrates on their regular file and not by the Benches.

A

Your obedient servant,

Illegible

For District Magistrate.

UB
21.7.25

4

Question (c): Statement showing the ~~precedents and antecedents of the Bench~~ names of members with their qualifications. I

Serial number.	Name of the other members.	~~Precedents.~~ Qualifications	Antecedents.
1.	Messrs. A. Devappa Punja.	Retired Tahsildar & Land-lord, B.A., B.L.	Appear good.
2.	A. Rama Rao.	Retired Dy. Superintendent of Telegraphs.	"
3.	M. Achuthayya.	Retired Huzur Sheristedar.	"
4.	M. Muhammad Khan. Saheb Bahadur.	Retired Sub Magistrate & land-lord.	"
5.	B. Parameshwara.	Retired Sub Magistrate.	"
6.	George Lobo.	Retired Jailor & land-lord.	"
7.	H. Koragappa.	Merchant & land-lord.	"
8.	N. Shrinivasa Rao.	Coffee merchant.	"
9.	M. Narayana Kini.	Do.	"
10.	Joseph V. Alvares.	Merchant.	"
11.	S. E. Aiman.	Merchant.	"
12.	K. Ramaya Hegde.	Merchant & land-lord.	"
13.	P. Abbunhi Beari.	Merchant.	"
14.	S. Amrita Rao.	Land-lord.	"

omit

*~~11.~~

omit

Question (d):- 40 cases were transferred from the file of this Court during the period under reference as shown below:-

Offences.	No. of cases transferred.	By whom transferred.
Indian Penal Code.	27.	Sub-Divisional Magistrate.
Dt. Municipalities Act. ...	2.	Do.
Town Nuisance Act.	3.	Do.
Hackney Carriage Act.	1.	Do.
Prevention of cruelty to animals Act.	4.	Do.
Motor Vehicles Act.	3.	District Magistrate.

Zeppelin

21st July 1925.

For District Magistrate.

21/7/25

5

Law (General) Dept

Memo no: 3144-B-2

8825

1st class Bench of Magistrates, Mangalore — President — Cognizance of offences — letter from the D.M, South Kanara L.D is no: 5702-25 dated 21-7-25

pp2-4 c F

From the last para of the above letter it is observed that the President of the Bench is taking cognizance of offences under the Towns Nuisances Act, the Hackney Carriage Act, etc. The District Magistrate, South Kanara is requested to report under what authority the President exercises this power.

DESPATCHED
8 AUG 1925 BS

To
The D.M, South Kanara

Reminder after 3 weeks 7-8-25

7.8.25

7.8.25

-C F. 30—41,000—8-9-24.

LAW (GENERAL) DEPARTMENT.

Received ..... 192 . Registered 192

Subject.

Court - Bench of Honorary Magistrates - Mangalore I Class - President - cognizance of offences.

Government Memorandum No.3144 B-2, dated 8th August 1925.

ENCLOSURES.
No. .....
.....
Spare copies .....

Ref. No. 6627-25.

Station Camp Puttur, *Dated the* 19th August 1925.

From (Name) G. W. Wells, Esquire, M.A., I.C.S.,

(Designation) Dt. Magistrate of South Kanara.

To The Secretary to the Government of Madras,

Law (General) Department.

Madras.

Sir,

The President of the Bench has been taking ------ cognizance of all cases under the Police Act upon reports received from Police officers since 1915 when under G.O. No.195 Judicial dated 28th January 1915 a/ I Class Bench with a non-official President was first constituted. This --- authorization was made by the District Magistrate, ------- Mr. M. E. Couchman while issuing instructions, - presumably under sections 16 & 17 C.P.C. - for the guidance of the Bench at the time of its constitution. This practice has continued without change till the present date.

2. It is to be noticed that the Bench Court was created by the Government on receipt of the proposals sub-

mitted from this District in response to G.O.No.1729, dated 14th August 1914. In para 2 of this G.O. it has been specifically mentioned that 'complaints will ----- continue to be made to the ordinary courts' while ----- nothing has been said of Police reports. The report of a Police officer is also not within the meaning of the word "complaint", - vide section 4(h) C.P.C. The Criminal Procedure Code, - Section 190(2), - read with Schedule IV, - invests the District Magistrate --- subject to the general or special orders of the Local Government with powers to empower any Magistrate to --- take cognizance of any offence upon a report in ------- writing of such facts made by any Police officer. The above authorization seems to be therefore made on this authority.

3 I do not know of any order prohibiting District Magistrates from exercising the powers vested in them under section 192(2) C.P.C in the case of Presidents of Bench Courts. G.O.No.1822 dated 13th August 1919 in which definite rules regarding the constitution and --- working of Benches of Magistrates in the mofussal were promulgated is also silent on this point. But a ----- perusal of Chapter VI pages 131 & 132 of the 'Manual for the Guidance of Special Magistrates' compiled for the Government would show that the special orders of Government would be necessary in such cases. This conflicts with what has been said above and I am also unable to find any authority in support of it. I ---- therefore solicit instructions in the matter.

Your obedient servant,

For Dt. Magistrate.

20/8/'25

M.D'S.20/8.

Copy

8

Law (General) Department.

M E M O:--No.5716 B-1, dated 21-11-1925.

Legislative Council Question No.134

Bench Courts - the first class

Bench at Mangalore.

---

x x x

3. With reference to paragraph 3 of the District Magistrate's letter dated 19th August 1925, he is informed that in the absence of any delegation under section 14(3) of the Code of Criminal Procedure a special magistrate can be empowered only by the local Government to take cognizance of offences.

Page 7 ef.

P.S.R.
19-11-25.

C.R.
20-11-25

V.T.K.
21-11-25.

To the District Magistrate of

South Kanara.

Law Dept. III-8—4,000—1-12-24.

QUESTION.—No. 258

for the next meeting of the Legislative Council ~~to be held on the~~ ~~192~~

L. § 314413
25/6/25

SUBMITTED that two copies of this Question may be forwarded to the Law (General) Department.

The Question has been admitted.

24/6

U.O. No. 1608-L dated 25-6-25.

To

The Law (General) Department.

Starred Question. Law (General) Department.

A.S.

Please see the D.M's reply giving the answers tc the question. Submitted that the answer to clauses (a) and (b) may be--

(a) The strength of the Bench is 15.

(b) The present President is a Bar-at-Law and a landlord paying a large amount of assessment to Government. His predecessor was a Law graduate and a retired Sub-Judge.

Clause (c).-- With reference to this clause it is submitted that it is not clear what the M.L.C. means by the "precedents and antecedents" of the Bench Magistrates. Persons who are considered suitable for appointment by the District Magistrates are appointed by Government. It may perhaps be enough if a list giving the names of Bench Magistrates with their qualifications is given. The answer to this clause may be--

List I at ↑ 4e-f.

(c) A list showing the names of the Bench Magistrates with their qualifications is appended.

The answer to clauses (d) and (e) may be--

List II at ↑ 4c-f

(d) .--Forty cases were transferred to other courts. The classes of offences and the Magistrates by whom transfers were made are given in a statement appended.

(e) --Thirteen cases under the Motor Vehicles Act were tried during the year out of which twelve ended in conviction.

Clause (f).--With regard to this clause attention is invited to the D.M's reply at page 3 current file.

4

The D.M. says that the order of his predecessor directed the Stationary Sub-Magistrate to retain all cases under the Motor Vehicles Act on his own file. The date of this order has not been reported and it is not known whether the thirteen cases referred to in answer to clause (e) were tried before the issue of this order. The fact that twelve out of the thirteen cases ended in conviction does not seem to support the District Magistrate's order. For orders whether the D.M. may be requested to report on this points In the meanwhile the answer to clause (f) may be--

(f) The Government are enquiring into the matter.

It will be observed from the D.M's reply that the President of the Bench takes cognizance of offences under the Towns Nuisances Act, the Hackney Carriage Act, etc. The President, Mr. Fernandez, was appointed in January last. But he has not been empowered to take cognizance of offences. The Bench can therefore only take up cases as are transferred to them. For orders whether the D,M. may be requested to report on what authority the President of the Bench is taking cognizance of offences.

L 3 Cf

G. 286 (R)
30.1.25

V.TK

PGK 27.7.25

28.7.25

V.TK 28/7

C.9.B
Please despatch answer with the 2 statements referred to the answer
PGK

C1

28/ DESPATCHED 30JUL1925

29.7

30/7

5

Draft Memo to the D.M, South Kanara
Submitted.

13
7-8-25

A
7-8-25

Sd
7-8-25

5 C.F [Memo No: 3144 B-2 dt 8-8-25]

Fols 6-7 C.F S.C. No: 4149 B. From the D.M, South Kanara Ref. No: 1627-25 dt 19-8-25

Please see the District Magistrate's letter at pages 6-7 of current file. He states that the authorization of the President of the Bench Court to take cognizance of cases was made in 1915 presumably under sections 16 and 17 of the ~~Civil~~ Criminal Procedure Code and that he does not know of any order prohibiting District Magistrates from exercising the powers vested in them under section 192(2) C.P.C. in the case of Presidents of Bench Courts. It is however observed that section 16 refers only to the making of rules by the District Magistrate subject to the control of the local Government in regard to the trial of cases, constitution of the bench and the time and place of sitting; while section 17 refers to the subordination of benches to District Magistrates. Neither of these authorises the Collector to empower any special magistrate to take cognizance of offences. Section 192 specifically lays down that the local Government or the District Magistrate subject to the general or special ~~control~~ orders of the local Government may empower any magistrate

Para 1-fr 6 cf

Para 2-fr 7 cf

190(2)?

4/7 of 19
Home (Judl)

to

to take cognizance etc The Government have not issued any ~~general~~ orders in regard to the exercise of this power by District Magistrates. The District Magistrate's action in empowering the President to take cognizance appears therefore to have been irregular. The Govt. generally empower special magistrates by name to take cognizance of offences. For orders whether the District Magistrate may be ~~xxx~~ informed accordingly and asked to submit specific proposals in regard to the present President of the Bench Court, specifying the class of offences which should be taken cognizance of.

A

Will L.S.(Drafting) kindly advise on the point raised by the D.M. Whether under the Code the D.M. has the power to authorise Prests. of Bench courts to take cognizance of offences?

L.S. 4.9.25

14.9.25

Law(Drafting)Department

The question is whether the District Magistrate has the power to authorise Presidents of Bench courts to take cognizances of offences on police reports.

Under section 190(2) Cr.P.C., the Local Government or the Dt.Magistrate, subject to the general or special orders of the Local Government, can empower any magistrate to take cognizance on police report of an offence for which he may try or commit to trial.

The power to take cognizance of an offence on police report, is one of the additional powers - specified in schedule iv, Cr.P.C. Every magistrate ~~has~~ may in virtue of his appointment as such exercise

Dy. 1325 5-9-25

the ordinary powers specified in the III schedule (section 36.) And any magistrate can be invested with any additional powers mentioned in the IVth schedule.

These powers 'ordinary' and 'additional' are respectively termed powers conferred by the Act and powers conferrable under the Act in s.14.

Assuming that section 190 in terms applies to the President qua magistrate, the District magistrate can invest the President as a magistrate with the additional power of taking cognizance of an offence on police report.

But the question arises whether, when the president so empowered is present taking part in the proceedings of the Bench as a member thereof, the Bench can have and exercise this additional power of taking cognizance of an offence on police report. The answer to this question depends on the interpretation of s.15(2 Under this sub-section the powers exercisable by the Bench are 'the powers conferred by this Code on a magistrate of the highest class to which one of the members present taking part in the proceedings as a member of the Bench belongs.' The powers that are conferred by this Code on a magistrate to whatever class he may belong are the ordinary powers specified in schedule III. As I have stated already, all magistrates become empowered under section 36 with all the --- ordinary powers' in virtue of their appointment as such, and without any special authorization either by the Local Government or the District Magistrate. These powers are powers

conferred by the Code on all magistrates. Additional powers may be conferred or are conferrable on them either by the Local Government or the District Magistrate under the provisions of the Code(section 37). Section 15(2) refers to ordinary powers, powers conferred by the Code as distinguished from additional powers conferrable under the Code. A distinction is always drawn between the case of an authorization by an Act and that under an Act. Please see section 14(1) and section 15(1) where the words used are 'conferred or conferrable by or under this code' . Therefore, the president who has been empowered under section 190(2) cannot share under section 15(2) along with the other members of his Bench, his additional powers of taking cognizance of offences on police report.

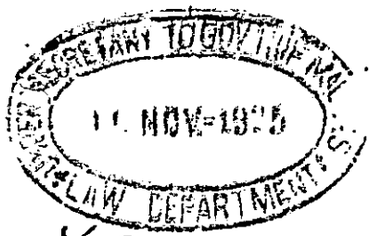
If the Bench is to take cognizances of offences on police report it has to be empowered to that effect by the Local Government under section 15(1) and not by the District magistrate under section 190(2) which makes no reference to Benches. The District magistrate ~~according~~ acting under sections 16 & 17 has no authority to confer any powers on magistrates and much less on Benches. Those sections relate to rule-making power for the distribution and disposal of the work. The rules framed must not be inconsistent with sections 14 & 15 , or any other provisions of the Code.

B

I do not express any opinion whether individual members of the Bench can be empowered under section 190(2), whether the section 14 should be made applicable to special magistrates while section 190(2) is made applicable to stipendiary magistrates. The point

does not arise on this file.

Law (Genl) 11/11



Law (Genl) Dept.

L&J 58/43
11-11-25

Bench Courts.

The first-class Bench at Mangalore.

*130 Q.—Mr. J. A. SALDANHA: Will the hon. the Law Member be pleased to state—

(*a*) what is the strength of the first-class Bench at Mangalore;

(*b*) what are the qualifications of the President of the Bench at Mangalore and what were the qualifications of his predecessor;

(*c*) what are the precedents and antecedents of the other members of the Bench;

(*d*) how many cases were transferred from the Bench Court to the other courts during the year ending 31st May 1925 and under what classes of offences and by which magistrate;

(*e*) how many cases under the Motor Vehicles Act were tried by the Bench during the year ending 31st May 1925 and what was the number of convictions; and

(*f*) whether there has been an order made by the District Magistrate to the effect that no cases under the Motor Vehicles Act should be sent to the Bench and on what grounds?

19th August 1925]

A.—(*a*) The strength of the Bench is 15.

(*b*) The present President is a Bar.-at-Law and a landlord paying a large amount of assessment to Government. His predecesson was a law graduate and a retired Sub-Judge.

(*c*) A list showing the names of the magistrates with their qualifications is appended.[a]

(*d*) Forty cases were transferred to other courts. The classes of offences and the magistrates by whom transfers were made are shown below:—

Offences.	Number of cases transferred.	By whom transferred.
Indian Penal Code	27	Subdivisional Magistrate.
District Municipalities Act ..	2	Do.
Town Nuisance Act	3	Do.
Hackney Carriage Act	1	Do.
Prevention of Cruelty to Animals Act.	4	Do.
Motor Vehicles Act	3	District Magistrate.

(*e*) Thirteen cases under the Motor Vehicles Act were tried during the year out of which twelve ended in conviction.

(*f*) The Government are inquiring into the matter.

Mr. P. ANJANEYULU:—"Arising out of the answer to clause (*b*), may I know whether any qualifications are prescribed for the presidentship of first-class Bench Courts in any place in this Presidency?"

The hon. Sir C. P. RAMASWAMI AYYAR:—"No qualifications are prescribed. But qualifications are generally expected."

Rao Sahib P. V. GOPALAN:—"With reference to clause (*d*), may I just ask the hon. the Law Member whether a subdivisional officer is not bound to show reasons when he transfers cases from the first-class bench magistrates' file to the file of any other court under section 528, clause (5), of the Criminal Procedure Code?"

The hon. Sir C. P. RAMASWAMI AYYAR:—"I presume that when cases are transferred they are transferred on account of specific reasons."

Mr. J. A. SALDANHA:—"Is it a fact that the magistrates are not asking for the reasons against a transfer when an application for transfer is made?

"I take that statement made by the hon. the Law Member as authentic and it will be included in the enquiry referred to in clause (*f*)."

Appendix

APPENDIX X.

[Vide answer to question No. 130 asked by Mr. J. A. Saldanha at the meeting of the Legislative Council held on the 19th August 1925, page 191 supra.]

Statement showing the names of members with their qualifications.

Serial number and names of the other members.	Qualifications.
(1) Mr. A. Devappa Punja ..	Retired Tahsildar and landlord, B.A., B.L.
(2) „ A. Rama Rao ..	Retired Deputy Superintendent of Telegraphs.
(3) „ M. Achuthayya ..	Retired Huzur Sarishtadar.
(4) „ M. Muhammad Khan Sahib Bahadur.	Retired Sub-Magistrate and landlord.
(5) „ B. Parameshwara ..	Retired Sub-Magistrate.
(6) „ George Lobo ..	Retired Jailor and landlord.
(7) „ H. Koragappa ..	Merchant and landlord.
(8) „ N. Shrinivasa Rao ..	Coffee merchant.
(9) „ M. Narayana Kini ..	Do.
(10) „ Joseph V. Alvares ..	Merchant.
(11) „ S. E. Aiman	Do.
(12) „ K. Ramaya Hegde ..	Merchant and landlord
(13) „ P. Abbunhi Beari ..	Merchant.
(14) „ S. Amrita Rao ..	Landlord.

Law (General) Department.

The question raised by the Assistant Secretary at page 6 ante was whether under the Code a District Magistrate has power to authorize the President of a Bench Court to take cognizance of offences. The Under Secretary (Drafting) who has been informally consulted is of opinion that a President of a Bench Court can, under section 14, be empowered only by the Local Govt. to take cognizance of offences. [illegible] In this connection attention is also invited to paragraph 1 of the office note, dated the 6th August 1915 at page 4 of notes to G.O.No.1840 Judicial, dated the 7th August 1915. From this it will be seen that the Local Govt. alone can confer ordinary and additional powers (including the power to take cognizance of offences) on special magistrates. This view has been consistently acted upon in the past and the Government alone have been empowering Presidents of bench courts to take cognizance of offences. It is submitted that in answer to paragraph 3 of the District Magistrate's letter dated 19th August 1925 he may be informed that in the absence of any delegation under section 14(3) of the Criminal Procedure Code, a special magistrate can be empowered only by the local Government to take cognizance of offences. A draft Memo. to the District Magistrate is submitted in the linked file.

Page 67

Cr. 20/11

V.T.K. 21.11

Page 8 ante

2. As regards the reference in the Drafting Under Secretary's note to a bench court being, as a whole, authorized to take cognizance of offences under section 15, it is submitted that the practice has been to empower only Presidents of benches to take cognizance

13

of offences.

AR
20/11
5 V.TK
21.11

AR
19-11-25

What is the procedure in cases in which Bench Courts are not empowered to take cognizance of offences? Please bring

V.TK
21.11

Please see the last sentence of para 1 on p/2 ~~supra~~ A copy of the Memo. received to the District Magistrate ~~[illegible]~~ in another connection has been added to the current file The papers may now be Recorded", no further action being necessary on this.

FS
8.2.26.

AR
9.2.26

AR
8-2-26

(Submitted to the Legislative Council)

A copy of memo to be placed on this file. The papers may be recorded

AR
11/2.

x page 8 ante

G.O. No. 416 10.2.26

Abstract.

Legislative Council—

Question—

August 1925 — Bench Court, Mangalore — Trial of offences under the Motor Vehicles Act. — Recorded.